

## PATENT COOPERATION TREATY

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## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

|   |   |   |
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| Applicant's or agent's file reference<br>24002.0010P1   | <b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) |   |
| International application No.<br>PCT/US02/27512   | International filing date (day/month/year)<br>28 August 2002 (28.08.2002)   | Priority date (day/month/year)<br>28 August 2001 (28.08.2001) |
| International Patent Classification (IPC) or national classification and IPC<br>IPC(7): A01N 27/00; A61K 31/015 and US Cl.: 514/763 |   |   |
| Applicant<br>XIMED GROUP PLC  |   |   |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☒ Certain observations on the international application

CORRECTED  
VERSION

|  |   |
|--|---|
| Date of submission of the demand<br>28 March 2003 (28.03.2003)   | Date of completion of this report<br>14 January 2005 (14.01.2005)                       |
| Name and mailing address of the IPEA/US<br>Mail Stop PCT, Attn: IPEA/US<br>Commissioner for Patents<br>P.O. Box 1450<br>Alexandria, Virginia 22313-1450<br>Facsimile No. (703)305-3230 | Authorized officer<br>Alton Fryer <i>J. Roberts for</i><br>Telephone No. (571) 272-1600 |

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US02/27512

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed.
- ☒ the description:  
pages 1-43 as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages NONE, as originally filed  
pages NONE, as amended (together with any statement) under Article 19  
pages NONE, filed with the demand  
pages 44-48, filed with the letter of 24 November 2003 (24.11.2003)
- ☒ the drawings:  
pages 1-4, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages NONE, as originally filed  
pages NONE, filed with the demand  
pages NONE, filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US02/27512**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. STATEMENT**

|                               |                     |     |
|-------------------------------|---------------------|-----|
| Novelty (N)                   | Claims <u>22-45</u> | YES |
|                               | Claims <u>1-21</u>  | NO  |
| Inventive Step (IS)           | Claims <u>22-45</u> | YES |
|                               | Claims <u>1-21</u>  | NO  |
| Industrial Applicability (IA) | Claims <u>1-45</u>  | YES |
|                               | Claims <u>NONE</u>  | NO  |

**2. CITATIONS AND EXPLANATIONS**

Claims 1-21 lack novelty and an inventive step under PCT Article 33(2)-(3) as being obvious over Connell et al. Connell teaches an invention comprising terpene, surfactants, citral, and water. Connell's composition is effective against bacteria and fungi. In a claim to a composition, a statement with respect to the composition's intended use (composition for treating infections in plants) has no patentable significance. Applicant's invention has no distinguishing features over Connell's invention; therefore, one having ordinary skill would have expected for the Connell's invention to exist as a true solution.

Claims 1-45 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

Claims 22-45 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest treating plants with terpene.

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

International application No.

PCT/US02/27512

**VIII. Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 1-45 are objected to as lacking clarity under PCT Rule 66.2(a)(v) because of the claims not fully supported by the description. The description does not disclose the claimed invention in a manner sufficiently clear and complete for the claimed invention to be carried out by a person skilled in the art because: How does an artisan prevent disease by an infectious agent in plants?